

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In Re:

Case No. 18-10864
Chapter 13

DAVID B. BRITTON and
CHRISTINA LOCICERO-BRITTON,
Debtors.

**MOTION TO STRIP
WHOLLY UNSECURED
LIEN**

DAVID B. BRITTON and CHRISTINA LOCICERO-BRITTON, debtors, by their attorney, Michael J. Toomey, Esq., as and for a Motion to strip the second mortgage of Trinity Financial Services, LLC, state as follows:

1. This application is made in support of the request to strip a second, wholly unsecured lien and to compel Trinity Financial Services, LLC to provide a satisfaction of lien pursuant to *In re Pond*, 252 F.3d 122 (2001).

2. The debtors commenced this Chapter 13 proceeding by filing of their petition on May 15, 2018.

3. An appraisal of the property, attached hereto and marked as Exhibit “A” indicates that the current value of the debtors’ property located at located at 15 Lincoln Avenue, Glens Falls, New York, is \$170,000.00.

4. Claim No. 8 indicates that there is a first mortgage on the property of \$173,5216.77, a copy of which is attached hereto and marked as Exhibit “B”. Thus, the first mortgage exceeds the value of the property. There have been no objections to these valuations.

5. Claim No. 7 further indicates that there is a second, wholly unsecured, second mortgage on the property due and owing to Trinity Financial Services, LLC in the

amount of \$90,295.28, a copy of which is attached hereto and marked as Exhibit “B”. No objection to this value has been received.

6. The plan filed by the debtors states that the “second mortgage shall be stripped” and paid pro rata with the remaining unsecured creditors...” A copy of the Plan is attached as Exhibit “C”.

7. This Motion is brought pursuant to *Layo*, 02-CV-445 (Nov. 26, 2003) to determine whether an adversary proceeding is required or whether a motion is sufficient to strip a wholly unsecured mortgage pursuant to *Pond*.

8. Based upon the developing case law and the lack of response from the creditor, it is respectfully submitted that the values offered by the debtors should be adopted and based upon that Trinity Financial Services, LLC be compelled to submit a duly executed lien release concerning its mortgage and deliver the same to the Chapter 13 Trustee within ten (10) days following service of an Order upon the defendant to be held in escrow by Andrea E. Celli, Esq., Trustee, to be released back to Trinity Financial Services, LLC upon dismissal or conversion of debtors’ petition, and only to be release to Michael J. Toomey, Esq., attorney for the debtors, for recording upon completion of debtors’ Chapter 13 Plan.

WHEREFORE, the debtors respectfully request an Order stripping the wholly unsecured second mortgage and compelling Trinity Financial Services, LLC to submit a duly executed lien release concerning its mortgage and deliver the same to the Chapter 13 Trustee within ten (10) days following service of an Order upon the defendant to be held in escrow by Andrea E. Celli, Esq., Trustee, to be released back to Trinity Financial

Services, LLC upon dismissal or conversion of debtors' petition, and only to be released to Michael J. Toomey, Esq., attorney for debtors, for recording upon completion of debtors' Chapter 13 Plan.

Dated: October 30, 2018

/s/ Michael J. Toomey

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